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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-526

RONALD DEAN STOLLINGS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

LEONARD W. YELSKY, Esq.
Counsel for Petitioner
340 Leader Building
Cleveland, Ohio 44114

DAVID A. SNOW, Esq.
Of Counsel
340 Leader Building
Cleveland, Ohio 44114

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Cleveland, Ohio 44114

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Of Counsel
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Petitioner, Ronald Dean Stollings, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit affirming the judgment of conviction from the United States District Court for the Southern District of West Virginia.

OPINION BELOW

The per curiam opinion of the Court of Appeals is not yet reported and is printed in the Appendix to this Petition (Appendix A).

JURISDICTION

The judgment of the Court of Appeals was entered on September 23, 1974, (Appendix B). The jurisdiction of this Court is invoked under Title 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

Can a conviction under the federal conspiracy statute, Title 18 U.S.C., Section 371, which is substantially based on hearsay evidence of subsidiary conspiracies remote from the conspiracy with which the defendant was charged, be upheld?

STATUTES INVOLVED

Title 18 U.S.C., Section 371 provides in pertinent part:

> *"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years or both."*

STATEMENT

Defendant, Ronald Dean Stollings, was charged under Title 18 U.S.C. Section 371 with conspiracy to violate federal counterfeiting laws. He was jointly indicted with other individuals who were additionally charged with substantive violations of the federal counterfeiting laws.

The government's case developed a vast quantity of hearsay testimony, consisting of numerous statements and acts relating to subsidiary conspiracies occurring outside the presence of the defendant and without his authority. These subsidiary conspiracies were between defendant's alleged co-conspirators and third parties. Such testimony, while normally inadmissable absent a showing that the out-of-court declarations and acts were made by co-conspirators while the alleged conspiracy was still in progress and in pursuance thereof, *Fiswick v. United States* 329 U.S. 211, was admitted over defendant's objections although no evidence was adduced connecting the defendant with any subsidiary conspiracy.

REASONS FOR GRANTING THE WRIT

FIRST: The Fourth Circuit has decided an important question of federal law in a way which conflicts with applicable decisions of the United States Supreme Court.

In *Grunewald v. United States*, 353 U.S. 391, 1 L. ed 2d 931, 77 S. Ct. 963 (1957), the rule developed that subsidiary activities occuring after the completion of the main conspiracy cannot be taken as overt acts in furtherance of the main conspiracy, i.e., a continuing agreement cannot be implied from the mere fact of conspiracy. As there stated, "overt acts . . . are meaningful only if they are within the scope of the original conspiratorial agreement."

In the present case, as in *Grunewald*, the proper test for admissibility should have been a showing "that the act(s) were done in furtherance of a prior criminal agreement among the conspirators." (See footnote 16 at p. 404 of Grunewald). None was ever shown in the present case. The government never proved that it was part of the alleged original conspiracy that certain defendants would further conspire with third parties in another state for the purpose of passing counterfeit notes. Therefore, the declarations and acts occuring outside the scope of the alleged original agreement and without either the knowledge or authority of the petitioner should in no way have been admitted against him.

The argument that a conspiracy, no matter how limited, embraces whatever subsidiarily occurs thereafter has been refuted repeatedly. In *Fiswick v. United States*, 329 U.S. 211, 91 L. ed 196 (1946), the Supreme Court wrote:

> *"Though the result of a conspiracy may be continuing, the conspiracy does not thereby become a continuing one. See United States v. Irvine (US) supra. Continuity of action to produce the unlawful result, or as stated in United States v. Kissel, supra (218 US p 607, 54 L ed 1178, 31 S Ct 124), "continuous cooperation of the conspirators to keep it up is necessary."*

Petitioner's trial failed to produce any evidence of continuous cooperation between petitioner and any of the alleged co-conspirators. In fact, there was no evidence that he even knew or had reason to know of the existence of those to whose extensive testimony he objected, although there was evidence to the contrary.

In *Krulewitch v. United States*, 336 U.S. 440, 93 L. ed 790 (1948), the government posed a similar argument, suggesting that even after the central aim of a conspiracy is complete, through success or failure, there exists an implicit subsidiary phase to conceal the original objective. The Court refused to accept this, reasoning: 1) Under the government's theory a conspiracy would theoretically never come to an end; 2) that under this rule most out-of-court statements could be offered into evidence as tending to shield co-conspirators; and, 3) an implicit conspiracy rule would create a breach of the general rule against the admission of hearsay evidence. The same reasoning applies in the present case.

SECOND: The decision of the Fourth Circuit is in substantial conflict with important decisions of other circuits.

As the First Circuit pointed out in *United States v. Spock*, 416 F. 2d 165 (1969), " . . . conspiracy law . . . is directed only at those who have intentionally agreed to further the illegal enterprise." In the case herein, since none of those offering hearsay testimony were shown to be co-conspirators, the rule allowing admission of out-of-court declarations of co-conspirators has no application.

The Fifth Circuit was unequivocal on this point in *Causey v. United States*, 352 F. 2d 203, 207 (1965). There it stated:

> *"To establish the intent essential to a conviction for conspiracy the evidence of knowledge must be clear and not equivocal. A suspicion, however strong, is not proof and will not serve in lieu of proof . . . proof . . . must convince beyond a reasonable doubt that a conspiracy existed, that the defendant knew it, and with that knowledge intentionally did some act . . . to further or carry on that conspiracy."*

The Seventh Circuit is in agreement. In *United States v. Varelli*, 407 F. 2d 735, 743 (1969) it stated, " . . . parties to the agreement must know of each other's existence."

Finally, in *United States v. Steele*, 469 F. 2d 165 (1972) the Ninth Circuit noted "A defendant must knowingly act in furtherance of the conspiracy" and " . . . those having no knowledge of the conspiracy are not conspirators."

CONCLUSION

A vital distinction must be made between a single conspiracy and subsidiary conspiracies of which the defendant had no knowledge or reason to know. In petitioner's case the essential element necessary to admission of the out-of-court declarations was a showing that the acts and statements admitted were done in furtherance of a prior criminal agreement to which Ronald Dean Strollings was a part. This element was missing.

Inasmuch as there is substantial conflict among the circuits and with previous decisions of this Court, and because of the fundamental practical importance of the issues, your petitioner respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

LEONARD W. YELSKY, Esq.
Counsel for Petitioner

DAVID A. SNOW, Esq.
Of Counsel

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-1087

United States of America, *Appellee,*

versus

Ronald Dean Stollings, *Appellant.*

No. 74-1088

United States of America, *Appellee,*

versus

Kermit Stollings, *Appellant.*

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Sidney L. Christie, District Judge.

Argued September 6, 1974. Decided September 23, 1974

Before Haynsworth, Chief Judge, and Russell and Widener, Circuit Judges.

Leonard W. Yelsky (Yelsky, Eisen and Singer on brief) for Appellant in No. 74-1087; James D. Nash, Jr., (Greene, Ketchum and Baker on brief) for Appellant in No. 74-1088; Wayne A. Rich, Jr., Assistant United States Attorney, (John A. Field, III, United States Attorney, and Robert B. Allen, Third-year law student, on brief) for Appellee.

PER CURIAM:

A jury convicted Ronald Dean Stollings and Kermit Stollings of conspiracy to buy, transfer, receive and deliver counterfeit money in violation of 18 U.S.C. § 371. It convicted Kermit Stollings of possession of counterfeit money in violation of 18 U.S.C. § 472 and of delivering counterfeit money in violation of 18 U.S.C. § 473.

Upon consideration of the record, briefs and oral argument, we find no reversible error and affirm the judgment of the District Court.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-1087

United States of America, *Appellee,*

versus

Ronald Dean Stollings, *Appellant.*

No. 74-1088

United States of America, *Appellee,*

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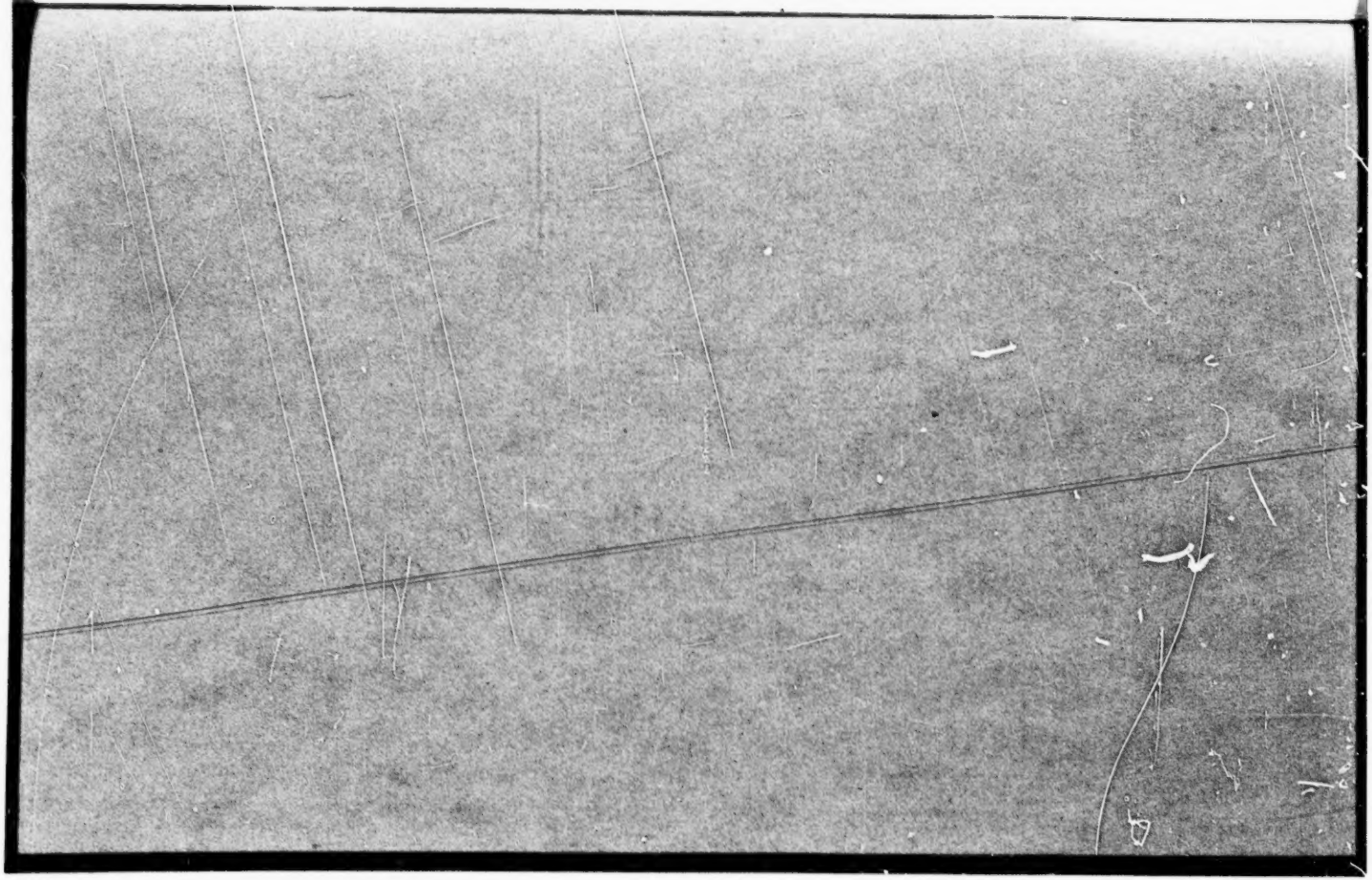
PER CURIAM:

A jury convicted Ronald Dean Stollings and Kermit Stollings of conspiracy to buy, transfer, receive and deliver counterfeit money in violation of 18 U.S.C. § 371. I convicted Kermit Stollings of possession of counterfeit money in violation of 18 U.S.C. § 472 and of delivering counterfeit money in violation of 18 U.S.C.§ 473.

Upon consideration of the record, briefs and oral argument, we find no reversible error and affirm the judgment of the District Court.

AFFIRMED.



In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-526

RONALD DEAN STOLLINGS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner's sole contention is that hearsay statements of his co-conspirators were improperly admitted into evidence against him.

After a jury trial in the United States District Court for the Southern District of West Virginia, petitioner was convicted of conspiracy to obtain and distribute counterfeit twenty dollar bills, in violation of 18 U.S.C. 371. He was sentenced to a term of five years' imprisonment. The court of appeals affirmed (Pet. App. A).

The evidence showed that on several occasions prior to December 10, 1970, Charles Scaggs, Fletcher Ramey, James Workman, and Kermit Stollings (petitioner's brother) discussed traveling to Cleveland, Ohio, from

Logan County, West Virginia, to obtain counterfeit bills, which would be passed in Logan County (Tr. 44-45, 51-52).[1] On December 10, Scaggs and Workman drove to Cleveland from Logan County, and the following day they met with petitioner and Kermit Stollings at petitioner's home in Cleveland. Petitioner made a number of telephone calls in an effort to locate a source for counterfeit bills. The men thereupon went to a nearby tavern where petitioner hoped to locate someone who had access to counterfeit bills (Tr. 47-48, 243-244). Petitioner finally arranged to secure counterfeit bills from one Ernie Collins (Tr. 48, 244). Collins furnished Kermit Stollings with $8,000 in counterfeit twenty-dollar bills, of which Workman and Scaggs each were given $2,000. Petitioner instructed them on how to darken the color of the bills so that it would be difficult to detect that they were counterfeit (Tr. 58-59, 117-118). In appreciation for his services, Workman, Scaggs and Kermit Stollings gave petitioner four of the counterfeit bills (Tr. 245).

On December 12, 1970, Workman, Scaggs and Kermit Stollings returned to Logan County and began to disseminate the counterfeit bills. Individuals to whom Scaggs had given portions of his share of the bills were arrested when they attempted to pass the money (Tr. 53-54, 66, 127-134, 172-179, 182-186, 191-192).

Petitioner contends that "a vast quantity of hearsay testimony" (Pet. 2) was improperly admitted in evidence against him at trial.[2] The testimony complained of was elicited from individuals who were involved in passing the counterfeit money after co-defendants Workman, Scaggs,

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[1]We are lodging with the Clerk of this Court the three-volume transcript of trial ("Tr.").

[2]Petitioner made no timely objection to the admission of any evidence on hearsay grounds.

and Kermit Stollings returned from Cleveland. Petitioner apparently contends that the conspiracy in which he participated was confined to the procurement of the counterfeit bills, and that the attempts to pass them in West Virginia constituted a separate conspiracy. However, the conspiracy of which petitioner was a part encompassed both the securing of the counterfeit bills and their subsequent distribution. Indeed, Scaggs testified that prior to traveling to Cleveland he discussed with other co-conspirators methods by which they could distribute the counterfeit bills (Tr. 51-52). Petitioner did not affirmatively withdraw from the conspiracy after his co-conspirators left Cleveland.

A "conspiracy does not lose its character because efficiency or expertise requires a division of labor among the participants." *United States* v. *Goodson*, 502 F.2d 1303, 1306 (C.A. 5); *United States* v. *Agueci*, 310 F.2d 817, 827 (C.A. 2). So long as the individuals who distributed the counterfeit bills did so in furtherance of the conspiracy, it was not necessary to show that petitioner knew of their specific participation or their identities. *Blumenthal* v. *United States*, 332 U.S. 539, 557; *United States* v. *Edwards*, 366 F.2d 853, 867 (C.A. 2), certiorari denied *sub nom. Jakob* v. *United States*, 386 U.S. 908. Petitioner knew that the distribution of counterfeit bills required an organization wider than that which might be disclosed to him by his personal participation. *United States* v. *Edwards*, *supra*. Accordingly, the hearsay statements made by petitioner's co-conspirators in furtherance of the conspiracy were admissible against petitioner. *Pereira* v. *United States*, 347 U.S. 1; *Blumenthal* v. *United States*, *supra*; *United States* v. *Rizzo*, 491 F.2d 215 (C.A. 2), certiorari denied, 416 U.S. 990; *United States* v. *Greer*, 467 F.2d 1064, 1070

(C.A. 7), certiorari denied, 410 U.S. 929; *United States* v. *Friedman*, 445 F.2d 1076 (C.A. 9), certiorari denied *sub nom. Jakob* v. *United States*, 404 U.S. 958; *Nelson* v. *United States*, 415 F.2d 483 (C.A. 5), certiorari denied, 496 U.S. 1060.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

DOJ-1974-12